Supreme Court, U.S.
FILED
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Christie Ann Thomas and Scott Fisher,
Petitioners,
v.
Gregory Dickel, Joseph Leo and the City of Des Moines, Iowa
Respondents.

On Petition For Writ Of Certiorari
To the United States Court of Appeals
For the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Can a segment of the traveling public be subject, at all times, to random stops and investigation by the police every time they operate a legal automobile upon the public roadways?

2. Can a Court ignore the "totality of the circumstances" test in determining the reasonableness of suspicion in an investigatory stop of an automobile and instead use a bright line test by using a single factor and ignoring all other factors including adjudged false testimony?

PARTIES TO THE PROCEEDING

Petitioners

Christie Ann Thomas and Scott Fisher.

Respondents

Gregory Dickel, Joseph Leo and
City of Des Moines, Iowa

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The May 30, 2000, opinion for the United States Court of Appeals for the Eighth Circuit is reported at 213 F.3d 1023. A copy of the Opinion is included in the Appendix ("App.") hereto at App. p. 1. The Opinion of the District Court for the Southern District of Iowa is unpublished and is included in the Appendix hereto at App. p. 12. The District court ordered entry of the Final Judgment on July 16, 1999, which is included herein at App. p. 23.

JURISDICTION

Petitioners filed a Petition for Rehearing and Petition for Rehearing En Banc which the United States Court of Appeals denied on June 28, 2000 (App. p. 22). This Petition for Writ of Certiorari is filed within 90 days of the denial of the Petition for Rehearing. The Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1254(1) and 2106.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Fourth Amendment:

Unreasonable searches and seizures.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const., Fourteenth Amendment:

Sec. 1. [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Christie Thomas and Scott Fisher were traveling on a public roadway when they were stopped by Des Moines City police officers. (App. p.13). The police officers asserted the reason for the stop was their belief that the appellants were not wearing their seatbelts. (App. p. 13). The officers then did a search and asserted that needles were on the floor in the backseat. (App. p. 13). They then allegedly arrested the two petitioners and conducted searches. (App. p. 14). Marijuana was found. (App. p. 14). The Petitioners were taken to jail. (App. p. 14).

Upon trial of the seatbelt charge, the state trial court dismissed the charge and specifically found that false testimony was given at the trial as to the reason for the stop. (App. p.15). The basis was the assertion by Officer Leo that the officers stopped the vehicle since they could see the seatbelt buckles hanging down from the roof. (App. p. 13). The State Court judge viewed the vehicle and found it impossible that the testimony was true as the car is not manufactured with seatbelts that hang from the ceiling. (App. p. 4). Finding a lack of proper grounds to stop the vehicle the seatbelt charge was dismissed. (App. p. 15). Thereupon the State dropped pending charges for possession of marijuana. (App. p. 15).

Christie Thomas and Scott Fisher, sued the City of Des Moines, Iowa and Des Moines Police Officers Gregory Dickel and Joseph Leo, seeking damages under 42 U.S.C. § 1983 and under state law claiming the officers wrongfully stopped, searched and arrested them. (App. p. 15). The District Court held the officers were entitled to qualified immunity for stopping the car and that Ms. Thomas and Mr. Fisher failed to present any evidence of a department's policy or custom upon which to predicate liability. (App. p. 18). The District Court then granted the city's and the officers' Motions for Summary Judgment on all of the plaintiffs' federal claims and declined to exercise supplemental jurisdiction over the state law claims. (App. p. 21).

A two person majority of an Eighth Circuit Court of Appeal's panel concluded that since it is common knowledge that many, if not most, automobiles now have shoulder harnesses and that it is common knowledge that most shoulder harnesses are visible from behind when deployed, the absence of a visible shoulder harness pulled down and across the driver provides police in Iowa with a reasonable, articulable suspicion that a crime is being committed and allows a fourth amendment investigatory stop. (App. p. 4).

The Appeals Court also found that the state court's specific finding of false testimony by one of the officers that a slack shoulder harness was seen hanging down from the roof of the car (which was not possible as the roof of the car did not have such a harness) and the state court finding that there was no legally sufficient probable cause to stop the El Camino, had no bearing on the conclusion the stop was based upon constitutional reasonable suspicion. (App. p. 4). In determining this, the panel majority found that in this case the relevant predicate fact of whether the officers were able to see shoulder harnesses pulled down and across the plaintiff's bodies, and since all of the parties agree that in this

case the officers could not see shoulder harnesses pulled down and across the plaintiff's bodies, the alleged falsity of Officer Leo's testimony was of no consequence whatsoever. (App. p. 4).

The Appeals Court also found that reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable cause can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information hat is less reliable then that required to show probable cause, making the issue in this case different then the one in the state court proceeding. (App. p. 5).

The Appeals Court also found the qualified immunity applied in this particular case because the court had determined that the plaintiff had failed to show a violation of the Fourth Amendment rights and summary judgment was appropriately granted to the officers. (App. p. 6).

It rejected Plaintiffs' assertion that municipal liability occurred because of the officers' admissions in the case failed to establish plaintiffs' claims as the officers' stop of the plaintiffs car did not violate Fourth Amendment rights. (App. p. 6).

A dissent was filed by Circuit Judge McMillian. Judge McMillian in his dissent essentially stated that obviously if Officer Leo found it necessary to fabricate a reason for stopping the Plaintiffs, then the officers likely had no particular or objective basis for expecting criminal activity at the time that they initiated the stop. (App. p.8). Because the logical conclusion would, therefore, be that the officers conducted the stop without having a reasonable suspicion of criminal activity, either a Fourth Amendment violation

occurred or a matter of genuine and factual dispute existed and summary judgment on the basis of qualified immunity was not properly granted. (App. p. 8).

He further stated it is incorrect for the majority to assume the actual knowledge and intent of the police officers at the time of the traffic stop is irrelevant so long as the court can rationalize in hind sight, a lawful basis for the stop. See for example *United States vs. Archer,* 840 F.2d 566, 572 (8th Cir.). (App. p. 7).

Additionally, even if such "bootstrap rationalizing" were permissible, Judge McMillian disagreed with the suggestion that officers could have had a lawful basis for a traffic stop under these circumstances. (App. p. 8). His reasoning was that upon viewing the Plaintiffs' vehicle from behind the officers could not see shoulder harnesses pulled down and across the plaintiffs' bodies. (App. p. 9). Yet the majority clearly recognized in some automobiles there are not shoulder straps as part of the seat belt system or, if shoulder straps existed, they are not visible from behind even when the seat belt is properly buckled. (App. p. 9). Thus, Judge McMillian stated, for those automobiles, the absence of the visible shoulder harness on the driver or a front seat passenger when the automobile is viewed from behind, is just as consistent with innocent behavior as it is with guilty behavior. (App. p. 9). Judge McMillian stated, ***"I see no reason why those drivers and front seat passengers must at all times be subject to random stops and investigations by the police simply because it is a matter of "common knowledge that "most" cars, not theirs, of course" have shoulder straps that are visible from behind."*** (App. p. 9). (emphasis added). Accordingly, Judge McMillian stated that he would hold a police officer's inability to see a shoulder strap extending down and across the driver or front seat passenger, upon viewing a moving vehicle simply from

behind does not support a reasonable, articulable suspicion that a seat belt is not being worn. (App. p. 9). Judge McMillian further went on to state, "*For that reason even if we assume "contrary to Officer Leo's testimony" that the police officers stopped the plaintiffs solely because they could not see from behind any seatbelts pulled down and across the plaintiff's shoulders, that in my view would not have been good enough to support a reasonable, articulable suspicion that the plaintiffs were violating the Iowa seatbelt law.*" (App. p. 9). (emphasis added).

Finally, Judge McMillian commented that it is essential to consider the policy implications of the case. He stated that the record in this case undeniably indicates that one of the officers gave false testimony under oath in explaining the basis for the traffic stop. (App. p. 9). Judge McMillian stated that when a law enforcement officer gives a false explanation for exercising his or her police power, the American public will justifiably perceive it as an abuse of power, and that perception will undermine the authority and creditability of law enforcement officers everywhere. (App. p. 11). Judge McMillian further stated "M*ore importantly, when a court of law appears to put its stamp of approval upon such police conduct, that the American public will rightfully lose faith in the court and that loss of confidence will undermine our entire system of justice.*" (App. p. 11). Accordingly, he disavowed any conclusion that the alleged falsity of Officer Leo's testimony is of no consequence whatsoever. He concluded by indicating "*the end does not justify the means.*" (App. p. 11).

REASONS FOR GRANTING THE WRIT

I. The Eighth Circuit's Opinion Directly Conflicts With The Reasoning And Holding Of *Delaware vs. Crouse*, 440 U.S. 648 (1979) In That The Circuit Court Has

Determined That A Certain Segment Of The Traveling Public Is At All Times Subject To Random Stops And Investigation By The Police Every Time They Enter An Automobile.

The Eighth Circuit in this case relied upon the case of *Delaware vs. Crouse,* 440 U.S. 648, 653, (1979) for the proposition that the stopping of the 1977 El Camino constituted a seizure within the Fourth Amendment. Yet the majority then went on in its opinion to rule opposite of the reasoning and holding of *Delaware vs. Crouse.* In *Crouse,* this Court was faced with a case wherein a patrolman in a police cruiser had stopped an automobile occupied by the defendant and who then seized marijuana in plain view in the car. The patrolman testified that prior to stopping the vehicle he had observed neither traffic nor equipment violations, nor any suspicious activity, and that he had made the stop only in order to check the driver's license and the car's registration. *Crouse*, 440 U.S. at 648. This Court determined the Fourth and Fourteenth Amendments were implicated because stopping an automobile and detaining its occupants constitutes a *"seizure"* within the meeting of those amendments even though the purpose of the stop is limited and the resulting detention quite brief. *Id.* This Court stated that one essential purpose of the proscription in the Fourth Amendment is to impose a standard of reasonableness in order to control the exercise and discretion and safeguard the privacy secured for individuals against arbitrary invasions. *Id.* at 653-54. Accordingly, the Court required that in a particular stop, a particular law enforcement practice is to be judged by balancing its intrusion on the individuals Fourth Amendment interest against its promotion of legitimate governmental interest. *Id.* at 654. The Court noted in implementing this matter, this standard usually requires at a minimum, that the facts upon which an intrusion is based be capable of measurement against *"an objective standard"*

whether this be a probable cause standard or a less stringent test. *Id.* In those situations in which the balance of interest concludes insistence upon "*some quantum of individual suspicion*" other safeguards are generally relied upon to assure that the individual's reasonable expectation of privacy is not subject to the discretion of the official in the field. *Id.* at 654.

This Court in *Crouse* reviewed the history of prior Supreme Court decisions concerning the stops of automobiles. In particular it viewed the history of the case of *United States vs. Martinez-Fuerte,* 428 U.S. 543 (1976) and *United States vs. Brignoni-Ponce,* 422 U.S. 873 (1975). In the *Brignoni* case the Court held that officers on roaming patrol may only stop vehicles if they are aware of specific articulable facts, together with rationale inference from those facts, that reasonably warrant suspicion that the vehicles contain aliens that may be illegally in the country. *Brignoni-Ponce,* 422 U.S. at 884. This was done upon a balancing of the governments need to deal with the nature of illegal alien traffic and the characteristics of smuggling operations against the public's interest in privacy and freedom from unwarranted governmental stop and intrusions. *Id.*

In *Martinez-Fuerte,* a checkpoint operation was authorized because the subject of the intrusion-the generating of concern or even fright on the part of lawful travelers, is appreciatively less in the case of a checkpoint stop. 428 U.S. at 558.

Accordingly, in *Crouse* this Court found and held that stopping or detaining a vehicle on an ordinary city street creates a physical and psychological intrusion which is visited upon the occupants of the vehicle similar to a random stop by boarder agents on border patrol. *Crouse,* 440 U.S. at

657. Accordingly, articulable reasonable suspicion must occur before an investigatory stop can occur.

Of a particular importance in the *Crouse* decision is the following:

> "An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation. n25 Automobile travel is a basic, pervasive, and often necessary mode of transportation to and from one's home, work place, and leisure activities. Many people spend more hours each day traveling in cars than walking on the streets. Undoubtedly, many find a greater sense of security and privacy in traveling in an automobile than they do in exposing themselves by pedestrian or other modes of travel. ***Were the individual subject to unfettered governmental intrusion every time he entered an automobile, the security guaranteed by the Fourth Amendment would be seriously circumscribed.*** As *Terry v. Ohio, supra*, recognized, people are not shorn of all Fourth Amendment protection when they step from their homes onto the public sidewalks. Nor are they shorn of those interests when they step from the sidewalks into their automobiles. See *Adams v. Williams*, 407 U.S. 143, 146 (1972)." (emphasis added).

The majority in the present case have not followed this directive. The Eighth Circuit in this case has determined, as Judge McMillian quoted, that those automobiles for which there is a absence of visible shoulder harness on the driver or front seat passenger when viewed from behind, are *at all times subject to random stops and investigations* by the police simply because of a matter of "common knowledge" that most cars "not theirs of course" have shoulder belts that

are visible from behind." In other words, there are certain individuals in the State of Iowa (and likely across the country with the publication of the decision) who will be subject to unfair governmental intrusion every time they "enter an automobile" and accordingly, "the security guaranteed by the Fourth Amendment [is] seriously circumscribed." See *Crouse*, 440 U.S. at 662-663.

The Petitioners respectfully submit the majority of the Eighth Circuit have made a decision which directly conflicts with the reasoning and analysis of this Court's opinion in *Crouse* and that this is a matter of exceptional importance and this Court should grant the Petition for Writ of Certiorari.

II. The Eighth Circuit's Opinion Conflicts With The Reasoning And Holding Of *United States vs. Skolow*, 490 U.S. 1 (1989) In That The Circuit Court Has Adopted A Single Factor Bright Line Test Rather Than The "Totality Of The Circumstances" In Determining The Reasonableness Of Suspicion In An Investigatory Stop Of An Automobile And Has Also Failed To Properly Balance All Relevant Facts.

The holding of the Eighth Circuit majority is contrary to the reasoning and holding of the *United States vs. Skolow*, 490 U.S.1 (1989) in that the panel has adopted a bright line test using a single factor and rejected the "totality of the circumstances" test in determining the reasonableness of suspicion in an investigatory stop of an automobile and has ignored other factors including admittedly false testimony of the police officer.

In supporting its opinion the majority cited to the case of *United States vs. Cortez*, 449 U.S. 411, 417 (1981) and *United States vs. Skolow*, 490 U.S.1 (1989). (App. p. 3).

While the majority utilized these cases for certain of the propositions, they did not follow the reasoning of those cases.

For example, the majority of the Eighth Circuit cited the case of the *United States vs. Cortez,* 449 U.S. 411, 417 (1981) for the proposition that for an investigative stop to be constitutional, the police have to have reasonable suspicion that the person stopped is about to be engaged in criminal activity. Furthermore, the majority in citing *United States vs. Skolow,* 490 U.S. 17,7 (1989) stated that the level of suspicion required for a *Terry* stop is obviously less demanding than that of probable cause. (App. p. 3).

However, both of those decisions also hold that in evaluating the validity of a stop, the court must consider "the totality of the circumstances - the whole picture." *Skolow,* 490 U.S. at 1585. The importance of the consideration of the totality of the circumstances is born out in this case. The majority considered only one factor. That factor was the assertion that the seat belts could not be seen as locked or worn when the vehicle is viewed from behind. The majority utilized this single factor for its determination. It did not consider the totality of the circumstances as required by *Cortez* and *Skolow* and also as utilized by this Court in the case of *Florida vs. Royer,* 460 U.S. 491, 502 (1983) and *Reid vs. Georgia,* 488 U.S. 438, 441 (1980).

The totality of the circumstances in this case involves consideration of other factors. For example, Judge McMillian noted that Officer Leo testified under oath in state court that he and Officer Dickel stopped the plaintiffs' vehicle for violating the seatbelt law after observing the slack, unbuckled shoulder belts hanging down inside the automobile. (App. p. 4). The majority refers to "alleged" false testimony." (App. p. 7). Judge McMillian in his dissent refers to this as "obviously false testimony" and relies upon

the previous findings of the state district court judge who evaluated the testimony. (App. p. 9). However, the majority panel, not only ignores the false testimony as part of the totality of the circumstances, but ignores the impact of the fact of the existence or non existence of a belt buckle hanging from the roof of a car. This adoption of a single factor test is in direct contravention of the previous directives of this Court.

The Eighth Circuit majority attempts to deal with the issue of the slacked harness hanging from the roof, by stating it is not one of the "predicate facts" relating to the stop. (App. p. 4-5). Yet, whether or not the officers could see a shoulder strap buckle hanging from the roof is precisely one of the issues of articulation of significant fact that would either lead to a reasonable suspicion or lead away from a belief of a reasonable suspicion to legitimatize the stop. In other words, if there were a buckle hanging from the roof of the car, in a slack position, it clearly would be one of the factors that would be relied upon by a police officer in determining the reasonable suspicion to make a investigatory stop. It would be part of the reason of the circumstance.

Likewise, the lack of a seat buckle hanging from the roof of a car, is part of the circumstance that impacts upon the decision as to whether or not there is a reasonable suspicion to justify an investigatory stop. If its existence is admittedly part of the circumstances, its non-existence must also be part of the "totality of the circumstance." The majority fails to give any credence whatsoever to the effect of the nonexistence of a buckle and as to how that effects the determination of a reasonable basis for the stop.

Petitioners' assert that a totality of the circumstance would demonstrate that when the factor relied upon by the majority (cannot see a seatbelt strapped across the body) is

combined with the additional factor that no seatbelt buckle is seen attached to the roof of the car, the officers are put on notice that this is one of the vehicles they are unable to determine from behind whether or not seatbelts are being worn. Accordingly, the passengers of that vehicle are no different than the Mexican individuals who are close to the border considered in the case of *Brignoni.* They are also in no different position than the individuals who are in the cars being stopped in *Crouse.* The consideration of the totality of the circumstances, rather than utilizing a single factor, would comply with this Court's analysis and holdings.

Also, the holding of the Eighth Circuit is contrary to the reasoning and holding of *Whren vs. United States,* 517 U.S. 806 (1996) in that the panel rejects the balancing test necessary when seizures are made on less then probable cause. The Eighth Circuit majority recognized that probable cause for the stop did not exist. (App. pp. 5, 5). Accordingly, it relied upon the concept of a reasonable suspicion requiring a particularized and particular basis and that level of suspicion is less demanding than that for probable cause. (App. p. 2, 5). Yet, in its decision it did not apply the requirements of *Whren vs. United States,* 517 U.S. 806, 810 (1996). In *Whren* this Court held that a detailed balancing to decide the constitutionality of vehicle stops is necessary when a seizure is made without probable cause. *Whren,* 517 U.S. at 818. This Court further noted that such balancing occurred in the case of *Martinez-Fuerete and Brignoni-Ponce* involving check point stops and roaming patrol stops respectfully. There a balancing of interests of the state was made against the interest of the individual to not be subjected to unreasonable seizures as protected by the Fourth amendment. *Id.*

The Eighth Circuit did not engage in any detailed balancing. Accordingly, the majority did not give

consideration to the fact that its decision was, as Judge McMillian pointed out, subjecting a certain portion of the inhabitants and drivers in Iowa to, at all times, be subject to random stops and investigations by the police simply because it is a matter of "common knowledge" that most cars "not theirs of course" have shoulder belts that are visible from behind. (App. p. 9). Again this Court stated in the case of *Crouse,* 440 U.S. at 648 that an individual that is operating or traveling in an automobile "does not lose all reasonable expectation of privacy simply because the automobile is subject to government regulations." *Id.* at 662. The Court further has stated "where the individual is subject to unfair governmental intrusion every time he entered an automobile, the security guaranteed by the Fourth amendment would be seriously circumscribed." *Id.* at 662-63. The Eighth Circuit opinion does not analyze and balance these interests and thereby is inconsistent and conflicting with decisions of this Court. Petitioners urge this Court to grant the Writ of Petition for Certiorari in this matter.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

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Christie Thomas and Scott Fisher, Appellants, v. Gregory Dickel, Joseph Leo, and City of Des Moines, Iowa, Appellees.

No. 99-3239

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

213 F.3d 1023

March 15, 2000, Submitted

May 30, 2000, Filed

SUBSEQUENT HISTORY:
Rehearing En Banc and Rehearing Denied June 28, 2000.

PRIOR HISTORY:
Appeal from the United States District Court for the Southern District of Iowa. 4-97-CV-90714. Honorable Robert W. Pratt.

DISPOSITION:
Affirmed judgment of district court.

COUNSEL:
Counsel who presented argument on behalf of the appellant was Bruce H. Stoltze of Des Moines, IA.

Counsel who presented argument on behalf of the appellee was Mark Godwin, Deputy City Attorney, Des Moines, IA.

JUDGES:

Before McMILLIAN, FLOYD R. GIBSON, and MORRIS SHEPPARD ARNOLD, Circuit Judges. McMILLIAN, Circuit Judge, dissenting.

OPINION BY:
MORRIS SHEPPARD ARNOLD

OPINION:

[*1024] MORRIS SHEPPARD ARNOLD, Circuit Judge.

Christie Thomas and Scott Fisher sued the City of Des Moines, Iowa, and Des Moines police officers Gregory Dickel and Joseph Leo, seeking damages under *42 U.S.C. § 1983* and under state law, claiming that the officers wrongfully stopped, searched, and arrested them. The district court[1] held that the officers were entitled to qualified immunity for stopping the plaintiffs' car and that Ms. Thomas and Mr. Fisher failed to present any evidence of a department policy or custom on which to predicate municipal liability. The district court then granted the officers' motions for summary judgment on all of the plaintiffs' other constitutional claims and declined to exercise supplemental jurisdiction over the state-law claims.

Ms. Thomas and Mr. Fisher appeal from only that part of the district court's judgment holding that the officers were entitled to qualified immunity on the claim that stopping the plaintiffs' car violated the fourth amendment. We believe, for the reasons stated below, that the officers did not violate the plaintiffs' fourth amendment rights by stopping them, and we therefore affirm the judgment of the district court.

I. The officers' stop of the plaintiffs' 1977 El Camino of course constituted a seizure within the meaning of the fourth

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[1] The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa.

amendment, *see Delaware v. Prouse, 440 U.S. 648, 653, 59 L. Ed. 2d 660, 99 S. Ct. 1391 (1979),* and was therefore "subject to the constitutional imperative that [the stop] not be 'unreasonable' under the circumstances." *Whren v. United States, 517 U.S. 806, 810, 135 L. Ed. 2d 89, 116 S. Ct. 1769 (1996).* An investigative stop is constitutional if the police have reasonable suspicion "that the person stopped is, or is about to be, engaged in criminal activity." **[*1025]** *United States v. Cortez, 449 U.S. 411, 417, 66 L. Ed. 2d 621, 101 S. Ct. 690 (1981); see also United States v. Eustaquio, 198 F.3d 1068, 1070 (8th Cir. 1999).* Reasonable suspicion requires "'a particularized and objective basis' for suspecting the person stopped of criminal activity," *Ornelas v. United States, 517 U.S. 690, 696, 134 L. Ed. 2d 911, 116 S. Ct. 1657 (1996),* quoting *Cortez, 449 U.S. at 417, see also Terry v. Ohio, 392 U.S. 1, 21-22, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968),* and the "level of suspicion required for a *Terry* stop is obviously less demanding than that for probable cause," *United States v. Sokolow, 490 U.S. 1, 7, 104 L. Ed. 2d 1, 109 S. Ct. 1581 (1989).*

The relevant facts in this case are undisputed. Under Iowa law (with exceptions not relevant here), a vehicle driver and all front-seat passengers are required to wear a "properly adjusted and fastened safety belt or safety harness" while the vehicle is moving, *see* Iowa Code Ann. § 321.445.2. The officers testified that they followed the plaintiffs' car for one or two blocks but could not see shoulder harnesses pulled down and across the plaintiffs' bodies, and the plaintiffs themselves readily concede that their shoulder harnesses could not be seen from behind when in use because the harnesses were attached to the top of the seats and not to the roof of the car. The officers concluded that the plaintiffs might well be violating Iowa law and therefore stopped the car.

The plaintiffs argue that an officer driving behind a car may not stop that car just because he or she cannot see a shoulder harness pulled down and across a car's occupant. We agree, however, with the district court's observation that it is unreasonable to expect police officers to be aware of all of the idiosyncratic designs of vehicle seat-belt systems. It is common knowledge that many, if not most, automobiles now have shoulder harnesses, *see generally* Iowa Code Ann. § 321.445.1, requiring that "1966 model year or newer motor vehicles subject to registration in Iowa shall be equipped with safety belts *and* safety harnesses" (emphasis added); *see also State v. Aderholdt, 545 N.W.2d 559, 563 (Iowa 1996),* holding that a stop was supported by reasonable suspicion because, "although the officer could not see whether the vehicle's occupants might be wearing lap-type seat belts, it was apparent [that] they were not wearing shoulder harness belts." It is likewise common knowledge that most shoulder harnesses are visible from behind when deployed. We believe that the absence of a visible shoulder harness pulled down and across a driver provides police in Iowa with a reasonable, articulable suspicion that a crime is being committed, and therefore conclude that the stop in this case did not violate the plaintiffs' fourth amendment rights.

II. In resisting this conclusion, namely, that the officers' stop of their car was legally justified, the plaintiffs place great emphasis on a state court's dismissal of the charges filed against them in connection with this incident. The state court suggested that Officer Leo presented false testimony when he testified that he saw a slack shoulder harness hanging from the roof of the car. The state court reasoned that because the harness was attached to the seat, it was impossible for the officer to see it hanging from the roof of the car; the state court then declared that the state had "no interest in sustaining or continuing a conviction which is based in whole or in part [on] false testimony." The state court "further specifically [found] that there was no legally

sufficient probable cause to stop the El Camino." Although the state court dismissed the criminal charges against the plaintiffs on these grounds, that ruling has no bearing on our conclusion that the stop was based upon constitutionally reasonable suspicion.

First of all, the truthfulness and accuracy of Officer Leo's testimony are relevant only to the extent that that testimony relates to the existence of a particularized and objective basis for suspecting criminal **[*1026]** activity. *See Ornelas, 517 U.S. at 696,* and *Conrod v. Davis, 120 F.3d 92, 97-98 (8th Cir. 1997), cert. denied, 523 U.S. 1081, 140 L. Ed. 2d 681, 118 S. Ct. 1531 (1998).* Since in this case the relevant predicate fact is whether the officers were able to see shoulder harnesses pulled down and across the plaintiffs' bodies, and since all of the parties agree that in this case the officers could not see shoulder harnesses pulled down and across the plaintiffs' bodies, the alleged falsity of Officer Leo's testimony is of no consequence whatever.

We further observe that during oral argument the plaintiffs conceded that they cannot invoke the principle of offensive collateral estoppel with regard to the state court's determination that the officers lacked probable cause, because the officers were not parties to the state criminal proceedings. *See Simmons v. O'Brien, 77 F.3d 1093, 1096 (8th Cir. 1996),* requiring that we look to state law to determine preclusion, and *Mizer v. State Automobile and Casualty Underwriters, 195 N.W.2d 367, 370 (Iowa 1972),* holding that collateral estoppel requires that the party against whom the estoppel is sought had a full opportunity to litigate the relevant issue. In any event, as the Supreme Court pointed out in *Alabama v. White, 496 U.S. 325, 330, 110 L. Ed. 2d 301, 110 S. Ct. 2412 (1990),* "reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that

required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause." The issue in our case is thus different from the one in question in the state court proceeding.

A court deciding whether qualified immunity applies in a particular case "'must first determine whether the plaintiff has alleged the deprivation of an actual constitutional right at all, and if so, proceed to determine whether that right was clearly established at the time of the alleged violation.'" *Pace v. City of Des Moines, 201 F.3d 1050, 1055 (8th Cir. 2000)*, quoting *Conn v. Gabbert, 526 U.S. 286, 290, 143 L. Ed. 2d 399, 119 S. Ct. 1292 (1999)*. Because the undisputed facts establish that the officers did not violate the plaintiffs' fourth amendment rights, we affirm the district court's grant of summary judgment on the officers' defense of qualified immunity.

III. The plaintiffs base their municipal liability argument on the officers' admission that they were trained to "look for a shoulder harness being pulled across the body as a means to identify seatbelt violations." Because we have found that the officers' stop of the plaintiffs' car did not violate their fourth amendments rights, it follows that the plaintiffs' claim against the city (inadequate training and municipal custom) must likewise fail. *See Abbott v. City of Crocker, 30 F.3d 994, 998 (8th Cir. 1994)*, holding that a city cannot be held liable on a failure-to-train theory unless a defendant police officer is found liable on an underlying substantive claim.

Finally, the plaintiffs argue that the district court erred when it declined to exercise supplemental jurisdiction over the state-law tort claims after it granted summary judgment on the federal claims. As we pointed out in *Condor Corp. v. City of St. Paul, 912 F.2d 215, 220 (8th Cir. 1990)*, however, federal courts should "exercise judicial restraint and avoid state law issues wherever possible." We believe, therefore,

that the district court had ample discretion to decline supplemental jurisdiction over the plaintiffs' state-law claims. *See 28 U.S.C. § 1367*(c)(3), which provides that a district court "may decline to exercise supplemental jurisdiction ... if ... the district court has dismissed all claims over which it has original jurisdiction."

IV. For the foregoing reasons, we affirm the judgment of the district court.

DISSENT BY:
McMILLIAN

DISSENT:

[*1027] McMILLIAN, Circuit Judge, dissenting.

I respectfully dissent. Although I too do not expect police officers "to be aware of all the idiosyncratic designs of vehicle seat-belt systems," supra at 3, I *do* expect police officers to be truthful in giving their reasons for making traffic stops. Here, Officer Leo testified under oath in state court that he and Officer Dickel stopped the plaintiffs' vehicle for violating the state seat belt law, after observing the slack, unbuckled shoulder belts hanging down inside the automobile. A state court judge examined the automobile and found it impossible to see the shoulder belts hanging down as Officer Leo described because the shoulder belts attach to the seats, not the roof area of the vehicle's interior. See Joint Appendix at 158-59 (state court's "Ruling on Defendants' Appeal and Order Vacating Judgments").[2]

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[2] The state court dismissed the seat belt charges against the plaintiffs with prejudice, see Joint Appendix at 158-59 (state court's "Ruling on Defendants' Appeal and Order Vacating Judgments"), and no appeal was taken therefrom.

The majority opinion states that the truthfulness of Officer Leo's testimony is relevant "only to the extent that that testimony relates to the existence of a particularized and objective basis for suspecting criminal activity." Supra at 4. Obviously, if Officer Leo found it necessary to fabricate a reason for stopping the plaintiffs, then the officers likely had no particularized and objective basis for suspecting criminal activity at the time they initiated the stop. Because the logical conclusion is that the officers conducted the traffic stop without having a reasonable suspicion of criminal activity, I would hold that a Fourth Amendment violation occurred under clearly established law, or it is at least a matter of genuine factual dispute under clearly established law, and thus summary judgment on the basis of qualified immunity was improperly granted. Accordingly, I would reverse the district court's summary judgment order and remand the case for further proceedings.

By contrast, the majority concludes that "the alleged falsity of Officer Leo's testimony is of no consequence whatever." Id. In my opinion, the majority reaches that conclusion, and the conclusion that no Fourth Amendment violation occurred, through flawed reasoning. First, it is incorrect to assume, as the majority apparently does, that the actual knowledge and intent of the police officers at the time of the traffic stop becomes irrelevant so long as the court can rationalize, in hindsight, a lawful basis for the stop. See, e. g., *United States v. Archer, 840 F.2d 567, 572 n. 2* (8th Cir.) ("in considering whether sufficient reasonable suspicion existed to justify a seizure, we will evaluate the circumstances known to [the officer] at the earliest point at which a seizure could be said to have occurred"), cert. denied, *488 U.S. 941 (1988).* Second, even assuming for the sake argument that such bootstrap rationalizing were permissible, I disagree with

the suggestion that the officers *could* have had a lawful basis for the traffic stop under the circumstances of this case.

The majority relies on the fact (readily admitted by the plaintiffs and confirmed by the state court's findings) that, upon viewing the plaintiffs' vehicle from behind, Officers Leo and Dickel "could not see shoulder harnesses pulled down and across the plaintiffs' bodies." Supra at 3. The majority then declares that "it is common knowledge that many, if not most, automobiles now have shoulder harnesses" and that "it it likewise common knowledge that most shoulder harnesses are visible from behind when deployed."[3] Id. The majority next opines that, whenever a moving vehicle in Iowa is viewed from behind, "the absence of a visible shoulder harness pulled down and across a driver provides police in Iowa with a reasonable, **[*1028]** articulable suspicion that a crime is being committed." Id. Thus, the majority concludes, "the stop in this case did not violate the plaintiffs' fourth amendment rights" because Officers Leo and Dickel could not have seen the shoulder belts, whether buckled or unbuckled, from behind the plaintiffs' vehicle. Id. I disagree.

As the majority clearly recognizes, in some automobiles there are no shoulder straps as part of the seat-belt system or, if shoulder straps exist, they are not visible from behind even when the seat belt is properly buckled. Thus, for *those* automobiles, the absence of a visible shoulder harness on the driver or a front-seat passenger, when the automobile is viewed from behind, is just as consistent with innocent behavior as it is with guilty behavior. I see no reason why those drivers and front-seat passengers must at all times be

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[3] There is nothing in the record to indicate how many vehicles on the roads of Iowa or nationwide do or do not feature shoulder belts that are visible from behind.

subject to random stops and investigations by the police simply because it is a matter of "common knowledge" that "most" cars (not theirs, of course) have shoulder belts that are visible from behind. I believe that police officers should, at a minimum, be expected to attempt to pull alongside the vehicle in question, to look for a shoulder strap extending across the person.[4] Therefore, I would hold that a police officer's inability to see a shoulder strap extending down and across the driver or front-seat passenger, upon viewing a moving vehicle strictly from behind, is *not* sufficient to support a reasonable, articulable suspicion that the seat belt is not being worn. For that reason, even if we assume (contrary to Officer Leo's testimony) that the police officers stopped the plaintiffs solely because they could not see from behind any seat belts pulled down and across the plaintiffs' shoulders, that, in my view, would not have been enough to support a reasonable, articulable suspicion that the plaintiffs were violating the Iowa seat belt law.[5]

Finally, I think it is essential to consider the policy implications of this case. Notwithstanding the fact that the police officers did find marijuana as a result of their traffic stop and investigation,[6] the record in this case undeniably

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[4] During oral argument, counsel for the police officers conceded that the officers never attempted to pull the patrol car alongside the plaintiffs' car to determine whether or not shoulder belts were in fact being used.

[5] If, however, those were the actual facts of the case, I would hold that the police officers were protected by qualified immunity because the law on this point was not clearly established at the time the traffic stop occurred.

[6] Counsel at oral argument informed the court that the marijuana charges against the plaintiffs were voluntarily

indicates that one of the officers gave false testimony under oath in explaining the basis for the traffic stop. See Joint Appendix at 158-59 (State court's "Ruling on Defendants' Appeal and Order Vacating Judgments"). When a law enforcement officer gives a false explanation for exercising his or her police power, the American public will justifiably perceive it as an abuse of power, and that perception will undermine the authority and credibility of law enforcement officers everywhere. More importantly, when a court of law appears to put its stamp of approval on such police conduct, the American public will rightfully lose faith in the courts, and that loss of confidence will undermine our entire system of justice. I therefore disavow the conclusion that "the alleged falsity of Officer Leo's testimony is of no consequence whatever." Supra at 4. The end does not justify the means.

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dismissed following the dismissal of the seat belt charges. See also Joint Appendix at 184 (Affidavit of Joseph Leo) ("It is my understanding that following Judge Bergeson's ruling with regard to the seatbelt charge . . . the Polk County Attorney's office dismissed the pending marijuana charges against [the plaintiffs].").

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

CHRISTIE ANN THOMAS and SCOTT THOMAS,	*	4-97-C V-90714
Plaintiffs,	*	
vs.	*	
CITY OF DES MOINES, GRFGORY DICKEL and JOSEPH LEO,	*	ORDER ON FOR SUMMARY JUDGMENT
Defendants.	*	

This matter comes before the Court on Defendant City of Des Moines, and Defendants Gregory Dickel and Joseph Leo's [hereinafter Officer Dickel and Officer Leo] Motions for Summary Judgment, filed April 1, May 11, and May 23, 1999 respectively. Defendant City of Des Moines seeks summary judgment on Plaintiffs' 42 U.S.C. § 1983 claim. Defendants Dickel and Leo seek summary judgment on all of Plaintiffs' claims. On June 30, 1999, Plaintiffs filed their Resistance to Defendants Dickel and Leo's Motions for Summary Judgment. The matter is now considered frilly submitted.

I. Background

The following facts are either undisputed or viewed in the light most favorable to the nonmoving party for the

motion being considered. See *United States v. City of Columbia*, 914 F.2d151, 153 (8th Cir. 1990); *Woodsmith Publ'g Co. v. Meredith Corp.*, 904 F.2d 1244, 1247 (8th Cir.1990). At approximately 8:00 p.m. on or about February 14, 1996, Plaintiffs were traveling in Scott Fisher's [hereinafter Fisher] 1977 El Camino westbound on University Avenue in Des Moines, IA. As the El Camino passed 26th Street, Officers Dickel and Leo, who were traveling together, turned in behind and began following Plaintiffs. After approximately two blocks, Officer Dickel pulled Plaintiffs over. Officer Dickel contends that based on his training and experience he observed from behind the vehicle that Plaintiffs were not wearing their seatbelts and thus violating Iowa's seatbelt law, Iowa Code Section 32 1.445(2).

Plaintiffs contend, on the other hand, that from the rear of the vehicle there is no way to observe whether or not seatbelts were worn as there is no shoulder harness which hangs down from the driver or passenger door area that is visible form behind. Plaintiffs further contend that Officers Dickel and Leo knew at the time they pulled the vehicle over that a seatbelt could not be seen from behind and that therefore they had should have known that they had no basis for the stop, both before and at the time they approached the Plaintiffs' vehicle.

Subsequent to stopping the vehicle, Officer Dickel approached Plaintiffs' vehicle and using a flashlight looked in the vehicle allegedly to locate weapons. At that time Officer Dickel saw syringes and needles on the floor of the El Camino which, based on his training and experience, he determined to be evidence of narcotics use. Officer Dickel proceeded to ask Fisher for his driver's license and when Fisher replied that he did not have one, Officer Dickel confirmed this through the Iowa Department of

Transportation records. Officer Dickel then placed Fisher under arrest for a seatbelt violation and for operating without a driver's license. Pursuant to a search incident to arrest, Fisher was patted down, handcuffed, and placed in the back seat of the squad car.

Officers Dickel and Leo then returned to the El Camino and asked Thomas to step out of the car and Officer Dickel searched the passenger compartment of the vehicle as part of the search incident to the arrest of Fisher. During this search, he located a backpack which contained marijuana in a pill bottle. On this basis, Officer Dickel advised Fisher that he was also being charged with possession of marijuana.

Officer Dickel alleges that he noticed that Thomas appeared nervous and agitated as she paced along the side of the sidewalk and repeatedly asked why the officers were searching the vehicle. Officer Dickel contends that Thomas' appearance, taken together with the presence of needles and syringes, led him to suspect that Thomas was also in possession of narcotics. Officer Dickel requested that Thomas consent to a search of her coat. Thomas refused, and asked why Dickel could conduct such a search. Officer Dickel indicated that he could conduct a search incident to citation for the seatbelt violation' and proceeded to ask her to hand over her coat. Thomas indicated on deposition that although she did not consent to the search she did not physically resist. In Thomas' jacket, Officer Dickel found a film canister containing marijuana and he then advised Thomas that she was being charged with possession of marijuana as well as the seatbelt violation. A female officer was then called to the scene to conduct a search of Thomas' pockets. Fisher was taken to the city jail and Thomas was taken to the county jail and both were bonded out that night.

Fisher and Thomas pled not guilty to the seatbelt

violation. Both were initially found guilty following separate bench trials. On appeal, wherein neither Officer Dickel nor Officer Leo were present or testified, the Honorable George Bergeson found no probable cause existed to stop the ElCamino. Thereafter, the marijuana charges were dismissed by the Polk County Attorney's Office.

Plaintiffs then filed a civil action in the Polk County District Court on October 18, 1997 asserting six claims: (1) violation under 42 U.S.C. § 1983; (2) assault and battery; (3) defamation;(4) false imprisonment; (5) malicious prosecution; (6) intentional infliction of emotional distress. Defendants removed the action to this Court on November 5, 1997. Defendants now seek summary.

It is undisputed that at the time of the search, Officer Dickel had not yet actually handed Thomas a citation for the seatbelt violation judgment on all of Plaintiffs claims.

II. Legal Standard

The purpose of summary judgment is to "pierce the boilerplate of the pleading and assay the parties' proof in order to determine whether trial is actually required." 11 *Moore's Federal Practice 3d*, § 56.02, pg. 56-20 (Matthew Bender 3d ed. 1997) (citing *Wynne v. Tufts Univ. Sch. of Med*, 976 F.2d 791, 794 (1st Cir. 1992), *cert denied*, 507 U.S. 1030 (1993). Summary judgment is appropriate only where the evidence is such that no reasonable jury could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

The precise standard for granting summary judgment is well-established and oft-repeated: summary judgment is properly granted when the record, viewed in the light most favorable to the nonmoving party and giving that party the

benefit of all reasonable inferences, shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Walsh v. United States*, 31 F.3d 696, 698 (8th Cir. 1994); City of Columbia, 914 F.2d at 153; *Woodsmith Publ'g*, 904 F.2d at 1247. The moving party must establish its right to judgment with such clarity that there is no room for controversy. *Jewson v. Mayo Clinic*, 691 F.2d 405, 408 (8th Cir. 1982).

The party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact based on the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, if any. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); Anderson, 477 U.S. at 248. Once the moving party has carried its burden, the nonmoving party must go beyond the pleadings and, by affidavits or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is genuine issue for trial. See Fed. R. Civ. P. 56(c),(e); *Celotex Corp.*, 477 U.S. at 322-23; *Anderson*, 477 U.S. at 257. "[T]he mere existence of some alleged factual dispute between the parties will not defeat a motion for summary judgment; the requirement is that there be no genuine issue of material fact." [emphasis added]Anderson, 477 U.S. at 247-48. An issue is "genuine," if the evidence is sufficient to persuade a reasonable jury to return a verdict for the nonmoving party. Id at 248. "As to materiality, the substantive law will identify which facts are material . . . factual disputes that are irrelevant or unnecessary will not be counted." Id. 111.

Analysis

As an initial matter, the Court finds it necessary to address the arguments raised by the parties in relation to the

claims brought under 42 U.S.C. § 1983. All Defendants seek summary judgment on Plaintiffs' § 1983 claim. "To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution or laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." *Roe v. Humke*, 128 F.3d 1213, 1215 (8th Cir.1997) (citing *West v. Atkins*, 487 U.S. 42,48(1988)). The City of Des Moines argues that it can not be held liable under § 1983 as Plaintiffs have not identified a policy or custom. Officers Dickel and Leo contend they also can not be held liable under § 1983 as they are entitled to qualified immunity. The Court will address each argument separately, first analyzing the City of Des Moines' Motion for Summary Judgment.

As a general rule, a governmental entity can be liable under § 1983 regardless of whether or not any government official was found personally liable. See *Parrish v. Luckie*, 963 F.2d 201, 207(8th Cir. 1992) (citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 484-85 (1986)). Municipal liability under § 1983 is only appropriate, however, in cases where a municipal "policy" or "custom" causes the constitutional violation. See *Monell v. Department of Soc. Servs.*, 436 U.S. 658, 694(1978) (municipal liability under § 1983 limited to actions occurring under official policy or custom). In this action, then, this Court is concerned with whether the City of Des Moines Police Department has a formal policy regarding the stopping of vehicles for seatbelt violations which can be found to have caused any violation of Plaintiffs' constitutional rights. See *Monell*, 436 U.S. at 694. Because the Court finds that there is no evidence of a department policy or custom upon which to predicate liability, nor evidence of failure to properly train or supervise officers, the Court concludes there is no basis upon which the City of Des Moines may be held liable for violation of§ 1983. See *City of Canton v. Harris*, 489 U.S. 378 (1989); *Monell*, 436 U.S. at

694 (1978); *Iskander v. Village of Forest Park*, 690 F.2d 126 (7th Cir. 1982). Therefore, the Court grants City of Des Moines' Partial Motion for Summary Judgment.

The Court next addresses Officers Dickel and Leo's Motion for Summary Judgment related to Plaintiffs' § 1983 claim. Officers Dickel and Leo argue that they are entitled to summary judgment on all issues including the § 1983 claim based on qualified immunity. In § 1983 actions against public officials in their individual capacity, qualified immunity protects state actors from civil liability for conduct which does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Collins v. Bellinghausen*, 153 F.3d 591, 595 (8th Cir. 1998). "A defense of qualified immunity is defeated if an official knew or should have known that his actions, taken within the sphere of official responsibility, would violate the constitutional rights of the plaintiff or if he took the action with the malicious intention to cause a deprivation of constitutional rights." *Lyles v. City of Barling*, --- F.3d - --, No. 97-2275, 1998 WL 537862, *5 (W.D. Ark. June 26, 1998) (citing *Harlow*, 457 U.S. at 818). To withstand a motion for summary judgment on qualified immunity grounds, a civil rights plaintiff must: (1) assert a violation of a constitutional right; (2) demonstrate that the alleged right is clearly established; and (3) raise a genuine issue of fact as to whether the official would have known that his alleged conduct would have violated the plaintiff's clearly established right. See *Lyles*, 1998 WL 537862 at *5 (citing *Habiger V. Fargo*, 80 F.3d 289 (8th Cir. 1996), cert. denied, - U.S. - (1996)).

Plaintiffs have asserted violation of their Fourth, Fifth and Fourteenth Amendment rights claiming that Defendants unlawfully stopped and searched their vehicle, and then

arrested them. Plaintiffs argue that Defendants did not have probable cause to stop their vehicle and that therefore any actions taken thereafter were unlawful. Following the rule articulated in *US. v. Pollington*, 98 F.3d 341, 342 (8th Cir. 1996) stating that when an officer observes a traffic offense or has probable cause to believe that a traffic offense occurred, a stop of a vehicle is allowable, this Court believes that Officers Dickel and Leo had sufficient cause to make an investigatory stop of the El Camino. See also *Whren v. United States*, 517 U.S. 806, 818 (1996); *United States v. Lowe*, 9 F.3d 43, 45 8th Cir. 1993) ("[Wlhen an officer observes a traffic offense-- however minor- he has probable cause to stop the vehicle.") (internal quotation omitted), cert. denied, 510 U.S. 1181(1994).

Generally, in situations where the Supreme Court has approved of limited intrusions on less than probable cause, the Court has always required that "the police officer ... be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 21(1968); see also *Michigan v. Long*, 463 U.S. 1032, 1049 (1983) (police must have reasonable belief that a suspect is dangerous and may gain immediate control of weapons to search areas of passenger compartment where weapons may be placed or hidden); *Delaware v. Prouse*, 440 U.S. 648, 663 (1979) (police must have reasonable suspicion that motorist is unlicensed, that car is unregistered, or that either the vehicle or an occupant is otherwise subject to seizure, to stop automobile and detain. In this case, based on their training and experience Officers Dickel and Leo believed that Plaintiffs were committing a traffic offense by not wearing their seatbelts in the front seat of the car. It was their observations while they were traveling behind the El Camino of no visible shoulder straps which led them to believe that Plaintiffs were violating Iowa Code Section 32 1.445(2) and

to therefore pull the vehicle over. Plaintiffs concede that Officer Dickel was trained to look for the harness to be pulled across the body as a means to identify seatbelt violations and they further admit that "typically – in other cars this possibly could be easily observable from behind." However, they argue that based on the facts of this case, it was unreasonable for the officers to base their stop on this observation because an El Camino does not have they type of shoulder harness which would be visible from behind the vehicle. The Court disagrees with Plaintiffs' argument. Essentially, Plaintiffs are asking this Court to require police officers to be familiar with every type of vehicle in existence and to know therefore which vehicles have such a shoulder harness and which do not. The Court concludes that this is unreasonable. As Plaintiffs concede, the officers are trained to look for a harness being pulled across a body as a means to identify seatbelt violations. Officers Dickel and Leo were following their training when they made their observations and pulled over Plaintiffs. The Court concludes that the officers identified "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant[ed]" their stop of Plaintiffs' vehicle. Even though Plaintiffs claim the officers were in error regarding their observations this does not in itself make the stop unreasonable.[2] See *Hill v. California*, 401 U.S. 797 (1971)

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[2] The Court is further persuaded by the Eighth Circuit's conclusion in Collins, 153 F.3d at 597stating: After-acquired information not infrequently casts a different light on a situation in which public officials acted on the basis of their then-acquired knowledge, however, and what we recently said in a somewhat similar case bears repeating here: "Public officials facing situations like this must take quick and decisive action to mitigate risks to health and safety. This is precisely the kind of good faith discretionary official action

(officer who makes a reasonable mistake in executing an arrest warrant and arrests the wrong person does not violate the Fourth Amendment).

Having concluded that Officers Dickel and Leo did not violate Plaintiffs' "clearly established constitutional rights of which a reasonable person would have known," the Court finds Officers Dickel and Leo are entitled to a defense of qualified immunity to protect them from civil liability. See *Collins*, 153 F.3d at 595.

IV. Conclusion

Based on the foregoing, the Court orders that Defendants' Motion for Summary Judgment should be granted as to Plaintiffs' § 1983 claim. To the extent Plaintiffs asserted other state law claims, the Court declines to exercise supplemental jurisdiction over these claims in the absence of a viable federal claim. See 28 U.S.C. § 1367(c)(3).

IT IS SO ORDERED.

Dated this 16th day of July, 1999.

"s/Robert W. Pratt"
ROBERT W. PRATT
U.S. DISTRICT JUDGE

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that qualified immunity is intended to protect." (Citing *King v. Bevers*, 148 F.3d, 1031, 1036(8thCir. 1998)).

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 99-3239S1DM

Christie Thomas and Scott Fisher,	*	
	*	
Appellants,	*	Order Deny Petition
	*	for Rehearing and
v.	*	for Rehearing
	*	En Banc
Gregory Dickel, Joseph Leo,	*	
and City of Des Moines, Iowa,	*	
	*	
Appellees.	*	

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied. (5128-010199)

June, 28,2000

Order Entered at the Direction of the Court:

"s/Michael E. Gins" Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

JUDGMENT IN CIVIL CASE
CASE NO.: 4-97-cv-90714

Christie Ann Thomas and
Scott Thomas,
Plaintiffs

v.

City of Des Moines, Gregory
Dickel and Joseph Leo,
Defendants

_____ JURY VERDICT. This action came before the Court for trial by jury. The issues have been tried and the jury has rendered its verdict.

__X__ DECISION BY COURT. This action came to consideration before the Court. The Issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED: that judgment is entered in favor of the defendants against the plaintiffs' on plaintiffs' 1983 claim.

July 16, 1999
Date

"s/James R. Rosenbaum"
Clerk

"s/L. DeFrancisco"
(By) Deputy Clerk/L. DeFrancisco

Supreme Court, U.S.
FILED
OCT 17 2000
CLERK

(2)

No. 00-564

In The

Supreme Court of the United States

CHRISTIE ANN THOMAS and SCOTT FISHER,

Petitioners,

v.

GREGORY DICKEL, JOSEPH LEO and THE CITY OF DES MOINES, IOWA,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

The material facts in this case are undisputed. (Petitioners' App., p. 3). Two Des Moines police officers in a police car, Respondents Dickel and Leo, followed Petitioners for one or two blocks as Petitioner drove in an El Camino. (Petitioners' App., pp. 3, 13). Officer Dickel, the driver of the police car, could not see the shoulder harness pulled down across the Petitioners' bodies. (Petitioners' App., pp. 3, 13). Iowa law requires all front seat passengers to wear safety belts. (Petitioners' App., pp. 3, 13). Officer Dickel pulled the Petitioners over. (Petitioners' App., pp. 3, 13).

Syringes and needles were seen on the floor of the El Camino. (Petitioners' App., p. 13). Fisher, the driver of the El Camino, had no driver's license. (Petitioners' App., p. 13). The car and the Petitioners were searched. (Petitioners' App., p. 14). Marijuana was found in the car which belonged to Petitioner Fisher. Marijuana also was found on the person of Petitioner Thomas. Both Petitioners were given seatbelt tickets and arrested for possession of marijuana. (Petitioners' App., p. 15). Both were found guilty of the seatbelt violations in separate bench trials. (Petitioners' App., p. 15).

Officer Leo testified that he could see unfastened seatbelts hanging from the roof of the El Camino and this led him to believe that Petitioners were violating Iowa law. (Petitioners' App., p. 4). Officer Dickel correctly testified at Petitioner Thomas' trial that he could not see any evidence of a seatbelt being worn, which led him to believe the Petitioners were violating Iowa law. (Respondents' App., pp. A2, A3). Officer Dickel's testimony is

correct because the safety harnesses in an El Camino are anchored behind the seats, not to the roof of the car, and they cannot be seen from behind whether they are fastened or unfastened. (Petitioners' App., p. 5). Significantly, the Petitioners concede that Officer Dickel was trained to look for the harness to be pulled across the body as a means to identify seatbelt violations and they further admit that, "typically – in other cars this possibly could be easily observable from behind." (Petitioners' App., p. 20).

Later, upon an appeal[1] at which neither officer testified, the seatbelt convictions were overturned. (Petitioners' App., p. 15). The marijuana charges were dismissed. (Petitioners' App., p. 15). The Petitioner sued the officers and the City. (Petitioners' App., p. 3). The federal district court granted summary judgment in favor of the officers and the City. (Petitioners' App., pp. 13-21). The Eighth Circuit Court of Appeals affirmed. (Petitioners' App., pp. 2-12).

The petitioners have mischaracterized a number of material facts which are undisputed in the record.

First, the officers did not "assert that needles were on the floor in the backseat." (Petition, p. 2). This would be impossible, as an El Camino has no back seat. Rather, "Officer Dickel saw syringes and needles on the floor of

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[1] In Iowa, simple misdemeanor charges are tried in Associate District Court and can be appealed to the District Court. (Iowa Rules of Criminal Procedure 34, 54).

the El Camino, which based on his training and experience, he determined to be evidence of narcotics use." (Petitioners' App., p. 13).

Second, the Petitioners say that "Upon trial of the seatbelt charge, the state trial court dismissed the charge and specifically found that false testimony was given at the trial as to the reason for the stop." (Petition, p. 2). This statement represents several significant omissions by Petitioners that are at best careless and at worst misleading.

The true, undisputed facts are that the Petitioners had *separate* seatbelt trials. (Petitioners' App., p. 15). Officer Dickel testified at one trial, correctly, that he could not see a seatbelt, fastened or unfastened, and therefore concluded that Iowa's seatbelt law was being violated. (Respondents' App., pp. A2, A3). Officer Leo testified that he could see the unfastened seatbelt hanging from the roof. (Petitioners' App., p. 4). Both Petitioners initially were found guilty. (Petitioners' App., p. 15). The convictions were overturned by the Polk County District Court at an appellate proceeding where *neither* officer testified. (Petitioners' App., p. 15).

Thus, regardless of Officer Leo's testimony, probable cause existed for the initial stop because Officer Dickel, the driver of the police car, observed a possible violation of Iowa law when he pulled Petitioners over. (Petitioners' App. p. 13).

The Petitioners completely ignore the correct testimony of Officer Dickel – that he saw no shoulder harness at all – and focus exclusively on the testimony of Officer Leo. Petitioners refusal to acknowledge the existence of

Officer Dickel's correct testimony renders their entire argument a nullity.

In addition, Petitioners have misidentified a number of cases upon which they rely:

Delaware v. Crouse (sic), 440 U.S. 648 (1979), which appears on pages v, 6, 8, 9, 10, 12, 13 and 14 of their petition is really *Delaware v. Prouse*;

Reid v. Georgia, 488 (sic) U.S. 438 (1980), which appears on pages v and 11 of their petition is correctly cited as *Reid v. Georgia*, 448 U.S. 438 (1980);

United States v. Martinez-Fuerete (sic), 428 U.S. 543 (1976), which appears on page v of their petition is really *United States v. Martinez-Fuente*. *United States v. Martinez-Fuerte* (sic), 428 U.S. 543 (1976), which appears on pages 8, 12 and 13 of their petition, is also really *United States v. Martinez-Fuente*;

United States v. Skolow (sic), 409 (sic) U.S. 1 (1989), which appears on pages v, 10 and 11 of their petition is really *United States v. Sokolow*, 490 U.S. 1 (1989); and

Wren (sic) *v. United States*, 517 U.S. 806 (1996), which appears on page v of their petition, is really *Whren v. United States*.

REASONS FOR NOT GRANTING THE WRIT

I. THE EIGHTH CIRCUIT OPINION IN THIS CASE DOES NOT CONFLICT WITH *DELAWARE V. PROUSE*.

It is the law that "discretionary spot checks" of automobiles for the sole purpose of checking the driver's license and the vehicle's registration violate the Fourth Amendment to the U.S. Constitution. *Delaware v. Prouse*, 440 U.S. 648, 659-663 (1979). The Newcastle County (Delaware) patrolman who pulled over Mr. Prouse did so seemingly out of boredom and nothing more. The patrolman observed "neither traffic or equipment violations nor any suspicious activity." *Id.* at 440 U.S. 650. As the patrolman explained it, "I saw the car in the area and wasn't answering any complaints, so I decided to pull them off." *Id.* at 440 U.S. 650-51.

This Court held that such a stop for such a purpose (or, more accurately, such a non-purpose) is unreasonable under the Fourth Amendment "except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is unregistered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law." *Id.* at 440 U.S. 663.

In this case, both Petitioners were "otherwise subject to seizure" for violating Iowa's safety belt law, (Petitioners' App. pp. 3-5, 18-20) (Respondents' App., pp. A2, A3), making *Prouse* inapposite and Petitioners' reliance upon it misplaced.

II. THE EIGHTH CIRCUIT OPINION IN THIS CASE DOES NOT CONFLICT WITH *UNITED STATES V. SOKOLOW*.

It is ironic that Petitioners rest their hopes upon *United States v. Sokolow*, 490 U.S. 1 (1989). The irony exists because in *Sokolow* a search and seizure at an airport were *upheld* using a totality of the circumstances test to determine the probability of the existence of criminal conduct. *Id.* at 490 U.S. 7-12. All of the circumstances in this case yield a result similar to *Sokolow*. Officer Dickel could not see a seat belt either on or off the driver or the passenger in the El Camino and reasonably assumed that a violation of Iowa law was occurring. (Petitioners' App. pp. 3, 13) (Respondents App. pp. A2, A3).

Instead of crediting Officer Dickel's testimony, Petitioners here continue their unrelenting (and heretofore unsuccessful) attempt to get a court to focus on Officer Leo's testimony.[2] The fact of the matter is that Officer Leo's testimony occurred long after the search and seizure of Petitioners and his testimony does not form any part of the totality of the circumstances as they existed on the night when Petitioners were stopped and arrested.

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[2] Petitioners assume that Officer Leo's testimony is a perjurious lie. There is nothing in the record of this case to indicate the validity of such an assumption. Perjury is defined in Iowa as "knowingly" making a false statement under oath. *Iowa Code*, § 720.2 (1999). Thus, incorrect testimony as a result of a lapse of memory, mistake or confusion is not perjury.

CONCLUSION

Because the Respondent officers had an articulable suspicion that a crime was afoot and because that suspicion was reasonable in light of the totality of the circumstance, the decision of the Eighth Circuit Court of Appeals in this case is consistent with the common law of the United States and the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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[3] On page 1 of the Appendix to their petition, Petitioners state that Mark Godwin presented argument on Respondents' behalf before the 8th Circuit. This is correct but incomplete. Gary Mattson argued for Officer Dickel and Fred Anderson argued for Officer Leo.

APPENDIX A

Cover Page

IN THE IOWA DISTRICT COURT FOR
POLK COUNTY OF POLK

CITY OF DES MOINES, Plaintiff, vs. CHRISTIE ANN THOMAS, Defendant.	)	CASE NO. DM 83051 TRANSCRIPT OF PROCEEDINGS

APPEARANCES

KATHARINE RAMSAY, Assistant City Attorney,

On behalf of City.

JOHN WELLMAN, Attorney at Law.

On behalf of Defendant.

The record was opened in the above cause in the Polk County District Court, Des Moines, Iowa, at 3:20 p.m., March 25, 1996, before the Honorable I. Joel Pasternak, Judge, presiding.

PAMELA A. DAY, CSR RMR
OFFICIAL COURT REPORTER
401 POLK COUNTY COURTHOUSE
DES MOINES, IA 50309

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* * *

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Q. Tell me how you observed the violations. What did you see?

A. We were traveling behind the motor vehicle. We observed that neither the passenger nor the driver was using a shoulder harness. If it's a normal occurrence if someone is using a shoulder harness, you can observe it as it is pulled across the body from the behind. The shoulder harness will show that it's pulled across their body. You can observe that from behind.

Q. You can't see through the seat, can you?

A. No. We can see through the back window.

Q. And if the shoulder harness is anchored up here, you can see the strap connected to the car somewhere over the shoulder?

A. That's correct.

Q. And then click down to the left-hand side?

A. That's correct.

Q. And so what you are saying you didn't see was the shoulder harness above the shoulder in neither the passenger or the driver?

A. that's correct.

* * *

Page 10, lines 21 to Page 11, line 3

Q. Okay. So the sole reason for stopping their truck was because you didn't see a shoulder strap from somewhere in the truck coming down over the shoulder?

A. That's correct.

Q. I want to make sure of that. And that would be the case from both the driver and the passenger?

A. That's correct. I did not observe a shoulder harness being used by either the driver or the passenger.

* * *

CERTIFICATE TO TRANSCRIPT

The undersigned, Official Court Reporter in and for the Fifth Judicial District of Iowa, which embraces the aforesaid county, hereby certifies:

That she acted as such reporter in the above entitled cause in the District Court of Iowa, before the judge stated in the title page attached to this transcript, and took down verbatim in computerized machine shorthand the proceedings had at said time and place.

That said shorthand notes were subsequently reduced to writing by her through use of computer aided transcription methods.

That the foregoing pages of typewritten matter are a full, true, and complete transcript of said shorthand notes so taken by her in said cause and that said transcript contains all of the proceedings had at the times therein shown.

Dated this 1st day of April, 1996.

/s/ _____
PAMELA A DAY CSR, RMR
Official Court Reporter
Fifth Judicial District

TRANSCRIPT ORDERED: 3-25-96
BY: JOHN WELLMAN
TRANSCRIPT DELIVERED: 4-1-96